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**Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations**

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# Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations

## Abstract

Like most coastal states, Indonesia is faced with a need to protect, conserve, and manage its marine and coastal resources. Twenty-six and a half per cent of the Indonesian Gross National Product was derived from the utilisation of coastal and marine resources in 2002.<sup>1</sup> Fish and other marine resources make a significant contribution to the supply of food, employment, and foreign exchange. More than 60% of animal protein consumed by the population is derived from the fisheries sector; and per capita consumption was estimated to be 21.7 kg per year in 2002.<sup>2</sup> Employment in the primary fishing sector was roughly 1,805,470 people; and exports exceeded imports by just over US\$ 1.6 million in 2000.<sup>3</sup> The aim of this paper is to address problems of maritime law enforcement and compliance in Indonesia with particular reference to the management of marine and coastal resources, especially coral reefs. The paper supports a model of community-based law enforcement for the management of coastal and coral reefs in Indonesia. It argues that community-based enforcement, integrated into a participatory co-management approach, is an appropriate model for effective coral reef management at the village level.

## Keywords

Maritime, Law, Enforcement, Compliance, Indonesia, Problems, Recommendations

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# Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations

Dirhamsyah\*

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## Introduction

Like most coastal states, Indonesia is faced with a need to protect, conserve, and manage its marine and coastal resources. Twenty-six and a half per cent of the Indonesian Gross National Product was derived from the utilisation of coastal and marine resources in 2002.<sup>1</sup> Fish and other marine resources make a significant contribution to the supply of food, employment, and foreign exchange. More than 60% of animal protein consumed by the population is derived from the fisheries sector; and per capita consumption was estimated to be 21.7 kg per year in 2002.<sup>2</sup> Employment in the primary fishing sector was roughly 1,805,470 people; and exports exceeded imports by just over US\$ 1.6 million in 2000.<sup>3</sup>

The aim of this paper is to address problems of maritime law enforcement and compliance in Indonesia with particular reference to the management of marine and coastal resources, especially coral reefs. The paper supports a model of community-based law enforcement for the management of coastal and coral reefs in Indonesia. It argues that community-based enforcement, integrated into a participatory co-management approach, is an appropriate model for effective coral reef management at the village level.

## Indonesian Maritime Laws

Maritime legislation in Indonesia evolved from the old maritime regulations of the colonial government of Netherlands Indie. The old colonial laws were replaced by new laws to meet changing maritime requirements. To date,

Indonesia has several maritime laws that relate to the management of marine and coastal activities. These include:

### Ocean Jurisdiction Claims

- *Act No. 6/1996* concerning Indonesian Waters
- *Act No. 5/1983* concerning Indonesian *Exclusive Economic Zone*
- *Act No. 1/1973* concerning Indonesian Continental Shelf

### Ocean Activities and Pollution Prevention

- *Act No. 5/1992* concerning Cultural Material Preservation
- *Act No. 21/1992* concerning Shipping
- *Act No. 22 of 2001* concerning Oil and Natural Gas

### Fisheries and Marine Resources Management

- *Act No. 9/1985* concerning Fisheries
- *Act No. 16/1992* concerning Quarantine of Agriculture, Cattle, and Fish

### Ocean Activities and Pollution Prevention

- *Act No. 5/1990* concerning Conservation of Biological Resources and Their Ecosystems
- *Act No. 5/1994* concerning Ratification of United Nations Convention on Biological Diversity
- *Act No. 23/1997* concerning Environmental Management

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- *Act. No. 41/1999* concerning Forestry

### **Immigration and Customs**

- *Act No. 9/1992* concerning Immigration
- *Act No. 10/1995* concerning Customs

### **Enforcement Authority**

Enforcement of Indonesia's coastal and marine resources laws and regulations<sup>4</sup> is jointly the responsibility of several national government institutions. Two major departments are the Ministry of Marine Affairs and Fisheries (MOMAF) and the Ministry of Forestry (MOF). Two directorates of the Directorate General for the Control of Marine Resources and Fisheries (DGCMRF) of the MOMAF have functions that relate to monitoring, control, and surveillance (MCS), and the enforcement of coastal and marine resources management laws and regulations; the Directorate for the Control of Marine Ecosystems; and the Directorate for the Control of Fish Resources. The control of coastal areas is one of the functions of the Directorate for the Control of Marine Ecosystems. Together with the navy and marine police, this Directorate conducts monitoring, control, surveillance, and enforcement within Indonesian territorial seas and offshore waters.

The Directorate General of Forest Protection and Nature Conservation (DGFPN) of the MOF also conducts surveillance and enforcement activities in marine protected areas.<sup>5</sup> To implement these functions, both the MOMAF and the MOF have 'civil investigation officers' (called *Penyidik Pegawai Negeri Sipil* (PPNS)), who have power to investigate illegal practices in each sector.<sup>6</sup>

There are also other national government agencies involved in marine law enforcement. These include the State Ministry for Environment (KLH), the Ministry of Communication and Transportation (MOCT), the Directorate General of Immigration (DGI), the Directorate General of Customs (DGC), the Indonesian Navy, and the Indonesian Police (Marine Police). Table 1 provides a list of the central government agencies involved in maritime law enforcement in Indonesia, including the laws and regulations that provide the basis for the powers.

Although, the KLH does not conduct surveillance activities in marine and coastal areas, it is also one of the principal government institutions involved in coastal environmental protection and management and the enforcement of environmental law. Similar to the MOMAF and the MOF, the KLH also has civil investigation officers for the enforcement of environmental laws.

The Indonesian Marine Police are primarily responsible for the enforcement of maritime law, drug prohibition, immigration and other similar civil responsibilities. They have limited authority, and are responsible only for surveillance and enforcement activities in inshore areas.

Like all armed forces in the country, the Indonesian Navy is primarily charged with responsibility for protecting national sovereignty. However, with respect to several Indonesian laws the Indonesian Navy is also responsible for the activities of surveillance and enforcement in waters beyond the territorial sea, including the entire Economic Exclusive Zone (EEZ), and for the Indonesian-flag fishing fleet on the high seas when Indonesia ratifies the UN Fish Stocks Agreement 1995.

In an effort to streamline and coordinate surveillance and enforcement policies program in Indonesian waters, including the EEZ, the National Coordinating Body for Ocean Safety (*Badan Koordinasi Keamanan Laut*) (BAKORKAMLA) was set up in 1972. Membership of this body is comprised of representatives from the Navy, Police, Customs, Ministry of Judicial Affairs, and the Attorney General's Office.<sup>7</sup>

### **Enforcement Programs and Practices**

Indonesia currently uses sea patrols and aerial surveillance (maritime surveillance) to ensure compliance with maritime laws and regulations. Aerial surveillance flights are carried out by the Indonesian Air Force (Angkatan Udara Republik Indonesia/AURI). Maritime surveillance is focused on the Indonesian EEZ and Archipelagic Sea Lanes.<sup>8</sup> Aerial surveillance is an important activity in the maritime law enforcement program.

**Table 1: National Government Agencies involved in Law Enforcement Activities**

Agency	Responsibility	Legislation
1 National Coordinating Body for Ocean Safety	<ul style="list-style-type: none"> <li>To coordinate maritime law enforcement activities in Indonesia</li> </ul>	<ul style="list-style-type: none"> <li><i>Cooperation Decree of 1972</i></li> </ul>
2 Ministry of Marine Affairs and Fisheries	<ul style="list-style-type: none"> <li>To undertake fisheries management and ensure compliance by both Indonesian fishermen and foreign fishing vessels;</li> <li>To control illegal fishing;</li> <li>To prevent the exotic diseases through importation of infected marine species.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 9 of 1985</i></li> <li><i>Act No. 16/1992</i></li> </ul>
2 Ministry of Forestry	<ul style="list-style-type: none"> <li>To conserve, preserve and utilise marine biodiversity and its ecosystems;</li> <li>To establish marine protected areas;</li> <li>Management authority for CITES.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 41 of 1999</i></li> <li><i>Act No. 5 of 1990</i></li> <li><i>Act No. 5 of 1994</i></li> </ul>
3 Ministry of Energy and Mineral Resources	<ul style="list-style-type: none"> <li>To prevent negative impact of mining activities on Indonesian marine and coastal areas</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 22 of 2001</i></li> <li><i>Act No. 11 of 1967</i></li> </ul>
4 Ministry of National Education	<ul style="list-style-type: none"> <li>To preserve cultural material on marine and coastal areas.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 5 of 1992</i></li> </ul>
5 Ministry of Transportation and Communication	<ul style="list-style-type: none"> <li>To manage shipping activities in Indonesia;</li> <li>To establish sea-lanes for foreign and domestic ships;</li> <li>To conduct search and rescue operations;</li> <li>To prevent marine pollution generated from oil spills.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 21 of 1992</i></li> </ul>
6 State Ministry for Environment	<ul style="list-style-type: none"> <li>To monitor marine pollution;</li> <li>To preserve and conserve the marine environment and ecosystems in all Indonesian territorial waters and the zones beyond its territory, the EEZ and Continental Shelf.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 23 of 1997</i></li> </ul>
7 Indonesian Navy	<ul style="list-style-type: none"> <li>To enforce maritime laws only on the areas beyond the territorial sea, including the EEZ, and Continental Shelf.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 5 of 1983</i></li> <li><i>Act No. 9 of 1985</i></li> <li><i>Act No. 5 of 1990</i></li> <li><i>Act No. 21 of 1992</i></li> <li><i>Act No. 23 of 1997</i></li> <li><i>Act No. 2 of 2002</i></li> </ul>
8 Indonesian Air Force	<ul style="list-style-type: none"> <li>To conduct air surveillance in all Indonesia territorial waters and the zones beyond its territory, including the EEZ and Continental Shelf.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 20 of 1982</i></li> </ul>
9 Marine Police	<ul style="list-style-type: none"> <li>To enforce maritime laws in internal and inshore waters.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 2 of 2002</i></li> <li><i>Act No. 8 of 1991</i></li> <li><i>Act No. 8 of 1981</i></li> <li><i>Act No. 12 of 1951</i></li> </ul>
10 Directorate General of Immigration	<ul style="list-style-type: none"> <li>To control the entry of individuals into Indonesia.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 9 of 1992</i></li> </ul>
11 Directorate General of Customs	<ul style="list-style-type: none"> <li>To control the importation of illicit drugs and illegal goods.</li> </ul>	<ul style="list-style-type: none"> <li><i>Act No. 10 of 1995</i></li> </ul>
<b>Note:</b> Additional Acts of relevance are: <i>Act No. 8/1981</i> concerning the Criminal Code; <i>Act No. 2/2002</i> concerning the Indonesian Police, and <i>Act No. 4/2004</i> concerning Judicial Power		

However, the absence of integrated law enforcement arrangements, including the lack of a national integrated air surveillance system, has resulted in ineffective aerial surveillance in Indonesia.<sup>9</sup> Data and information collected from aerial surveillance have not yet been used properly by the client agencies, such as the MOMAF. This problem has been exacerbated by lack of funds and infrastructure resulting in a limited number of aerial surveillance operations. Most enforcement in coastal and marine areas is carried out by sea patrols. Aerial surveillance is employed only for emergency cases, such as safety-at-sea operations, search and rescue, 'hot pursuit' of illegal foreign fishers, and piracy.

There are several different tasks for sea patrols that are currently undertaken by government agencies to enforce maritime laws and regulations. Within the territorial/coastal waters, at least two different tasks are given to sea patrols. The first is sea patrol focused on monitoring, control and surveillance of fishing activities. This operation is carried out by the DGCMPF of the MOMAF, the Indonesian Navy and the Marine Police. There are nine MOMAF surveillance vessels used for patrolling territorial waters.<sup>10</sup> These vessels are equipped with radios, radar, and other navigation equipment.

The second main type of sea patrol in coastal areas is focused on monitoring, control, and conservation of marine biodiversity. This is usually controlled by the DGFPNC of the MOF, with support from the Indonesian Navy and the Marine Police, and protects marine parks and the environment. For coastal areas, the agency funding the operations controls the focus and area of patrols. The navy and marine police provide law enforcement support to the primary agency, unless they are directed to take control of the primary task.

Several Indonesian agencies also carry out sea patrols beyond the territorial sea and into the EEZ. National sovereignty and the control of other illegal activities, such as smuggling, anti-piracy, and illegal fishing, are the main focus of these sea patrols.

### Principal Problems

Although, Indonesia has laws that cover coastal and marine resource management, in reality there is a high degree of non-compliant behaviour. There has been widespread illegal fishing in almost all Indonesian coastal areas, even in remote areas.

Indonesian law enforcement has also suffered from systemic corruption in government institutions. Fegan argues that the involvement of the Indonesian Navy in the fishing industry has resulted in difficulties for the government in implementing trawling company regulations (e.g. the banning of trawl nets) in the Arafura Sea, surrounding West Papua.<sup>11</sup> The involvement of the Induk Koperasi Angkatan Laut (INKOPAL)<sup>12</sup> in the fishing industry, as a business partner of the leading foreign fishing companies whose trawlers ply the Arafura Sea, has also resulted in ineffective law enforcement in this area.

These problems, however, are only a small part of the multitude of difficulties facing law enforcement, from monitoring and surveillance to prosecution and deterrent penalties. These problems are due to several interrelated factors:

- (i) limited enforcement resources, including funds, personnel, and facilities;
- (ii) loopholes and lack of integration in the laws and regulations for coastal and marine resource management;
- (iii) lack of inter-agency coordination mechanisms and communications among the various enforcement agencies;
- (iv) lack of environmental and natural resource awareness of problems and impact from illegal or destructive practices in the short, medium and long term for food security and the livelihoods of the coastal communities;
- (v) lack of an appropriately aware, competent, and committed judicial court system with respect to marine resource issues; and
- (vi) the vast geographic area requiring surveillance and enforcement. These issues are discussed below.

### *Lack of funds*

The Asian economic crisis in the late 1990s hit Indonesia's economic sector very hard.<sup>13</sup> The economic crisis forced the Government to prioritise government funds for poverty alleviation and currency support programs rather than for law enforcement programs, particularly in coastal and marine areas.<sup>14</sup> This re-prioritisation away from law enforcement has impacted on the performance of most law enforcement agencies in Indonesia. Insufficient budgets, coupled with inadequate budgetary controls, have resulted in difficulties in financing sea operations, including procurement of facilities and equipment, maintenance and personnel costs.<sup>15</sup> Sea patrol and air surveillance operations have decreased significantly,<sup>16</sup> and some law enforcement agencies were actually economically pushed into becoming part of the compliance problem rather than the solution.

### *Lack of Equipment*

The nine patrol vessels of MOMAF are far from enough to provide effective sea patrols in coastal and marine areas.<sup>17</sup> As one of the leading agencies with maritime law enforcement responsibilities, the MOMAF needs at least 90 to 100 patrol vessels to cover the huge fishing areas in Indonesia.<sup>18</sup> Andin argues that the MOMAF needed at least 20 years to enhance its equipment and resources to achieve the necessary enforcement program for a large country like Indonesia. Currently, the MOMAF has only the capacity to build five patrol vessels a year.<sup>19</sup> Maintenance is one of those flexible items that usually disappear in budget cuts with cumulative negative impacts on fixed assets, such as vessels and other major equipment. The requirement for new and increased assets should be assessed against:

- available current and future funding;
- value of the resource and alternative compliance mechanisms;
- better use of existing assets through inter-agency Memoranda of Agreement; or
- privatisation of such services through accountable output-based deliverables to reduce corruption, misuse of funds and other inefficiencies.

The lack of equipment is also a problem for the Indonesian Navy and the MOF. According to traditional military-equipment needs assessments, the Indonesian Navy requires at least 300 vessels, large and small, to conduct effective sea patrols within the Indonesian jurisdiction. Thus far, it has only 115 vessels, and of these, only about 25 are operating at sea at any given moment.<sup>20</sup>

As one of the leading agencies in preventing and protecting marine biodiversity in Indonesia, the MOF has also suffered from the lack of enforcement resources. The lack of funds, facilities and personnel has led to ineffective enforcement activity in most marine protected areas under its management, including Marine National Parks, Marine Recreation Parks, and Marine and Wetland Wildlife Sanctuaries.<sup>21</sup>

Ineffective enforcement has resulted in illegal fishing practices in many marine protected areas. The illegal fishing practices occurred even in totally protected areas, such as the Komodo National Park. Pet and Djohani revealed that dynamite, poison and other illegal gear for fishing have been used in the Komodo Islands.<sup>22</sup>

### *Lack of trained personnel*

Limited funds for most government enforcement agencies have also resulted in the lack of training for personnel. Many law enforcement agencies cannot conduct proper basic training to improve the capacity and capability of their personnel due to the lack of funding for training and education to enhance professionalism. They also cannot attract trained or professional personnel, because they cannot pay appropriate salaries.

The lack of quality and quantity of trained personnel in law enforcement is very critical. For example, the Coral Reef Rehabilitation and Management Project (COREMAP) and the district government of Selayar faced a serious problem over personnel recruitment to operate the MCS program in that area. Several trained personnel were required to be vessel operators, radio operators, maintenance technicians and civil prosecution officers. However, not one of the officers of the Fisheries Office of Selayar District had formal qualifications as a civil

investigation officer or to operate vessels and radio communications. This situation forced COREMAP and the Selayar District Government to recruit personnel from the Provincial Fisheries Office of South Sulawesi for several key positions.<sup>23</sup>

### ***Lack of integrated laws and regulations***

Indonesia is reputed to be a country that has good laws, but unfortunately, they are not implemented effectively.<sup>24</sup> On the surface most of the laws look good, but in reality they are often useless, cannot be enforced, and make a mockery of the coastal and fisheries authorities, the lawyers and lawmakers. Many loopholes in the laws allow people to commit violations without being prosecuted. For example, the use of poisons or explosives or other illegal gear for fishing is prohibited by the law. According to the fisheries law, an official can arrest an offender only when found illegally fishing on site. Hence, fishermen committing offences, who see an approaching patrol boat, simply drop their illegal gear or trawl nets under water and wait until the patrol boat leaves the area. When the officers fail to find illegal fishing apparatus, fishermen continue their illegal activities.

According to the law, illegal fishers must be caught in the act to be guilty of an offence. With the use of poisons, this would require an authorised officer to be in the water with a camera next to an illegal fisherman as he poisoned the fish for the prosecution to be successful. Possession of fish caught by destructive methods, or possession of destructive or deleterious substances on board a vessel, is not addressed under current legislation.

The evidentiary proof required to convict alleged offenders makes it difficult to secure convictions for violations of fisheries and other marine resources laws. For example, to prove the use of dynamite or cyanide for fishing, police and the district attorney should get a formal statement from the Crime Laboratory or Forensic Laboratory that states that the evidence, such as fish, was caught by using explosives or cyanides. Then one needs to prove that the fish was actually caught by this fisher,

and not transferred from another vessel or friend.<sup>25</sup>

Laboratory testing causes further problems. Not all districts have the required facilities. Consequently, many fisheries violations in Indonesia, especially using explosives and poisons, have been prosecuted under other laws, such as the *Critical Condition Act No. 12* of 1951 (possession of explosives without a permit).

There are big variations in the penalties under the Fisheries Act and under the Criminal Code. For example, under the Fisheries Act the penalty for using explosives is six years in prison and a penalty of up to Rp. 1.2 billions (US\$133,000).<sup>26</sup> For a similar violation under the Criminal Code, the penalty is ten days in jail or a fine of up to Rp. 750 (US\$0.10).<sup>27</sup> Because it is easier to secure conviction under the Criminal Code, prosecutors prefer to prosecute offenders under the Criminal Code instead of the Fisheries Act.

### ***Lack of coordination***

Coordination among the various agencies responsible for enforcement in Indonesia is seriously lacking. In theory, BAKORKAMLA was established as the mechanism to improve coordination among the various enforcement agencies. In practice, however, it has not been easy. As stated by the Hon. Susilo Bambang Yudoyono, then Minister of Coordinating Ministries of Politics and Defence (MENKO POLKAM),

BAKORKAMLA has not yet fully performed its functions, as it was expected. This institution cannot properly respond to transnational crimes that have increased significantly. Ineffective surveillance and enforcement programs have caused a loss for Indonesia of about Rp. 90 quintillion (US\$10 billion) annually.<sup>28</sup>

Effective coordination among enforcement authorities is further undermined by a lack of clear delineation of duties and responsibilities, leading to overlap and duplication of effort. The recent problem of oil spills in the Seribu Islands demonstrates this lack of coordination. Although five oil spills have occurred in the Seribu Islands since 2003, there has been no



effective response action from government. During the most recent spill, several government enforcement agencies, including the MOMAF, the State Ministry of Environment, and the Marine National Park of Seribu Islands, as the representative of the MOF, sent their officers to investigate the problem.<sup>29</sup> However, there was no coordination among agencies and the activities were totally fragmented with each agency working alone. They each carried out separate investigations based on their specific sectoral mandates. To date, not one oil company that operated in Seribu Islands has been prosecuted.

### *Lack of environmental awareness*

The effectiveness of law enforcement programs is usually determined by community compliance with the regulations and policies. This can be achieved usually through public awareness activities or campaigns emphasising the importance of marine resources and ecosystems for humankind. This program should be conducted continuously, before, during and after the enforcement program, and should incorporate the need for rules and regulations, with examples of those developed and implemented by other 'communities'.

Although the need for sustainable development programs might be understood by most local politicians and bureaucrats, only limited programs on public awareness of the marine environment have been implemented. The lack of public awareness and knowledge of the marine environment has contributed to the degradation of marine and coastal ecosystems.<sup>30</sup> This lack of awareness occurs at all levels, including government officers, police, attorneys and judges.<sup>31</sup> It is often a reason for a lack of commitment in supporting and implementing responsible and sustainable fisheries management practices. Many judges do not have the capacity to understand or handle environmental cases from a scientific point of view.<sup>32</sup> This has caused many violations to go unpunished. For example, many cases of forest fires in Riau have not been punished due to the lack of knowledge and understanding of the district attorney and judge about the processes and negative impact of such activities on the environment.<sup>33</sup> This, coupled with the resources

available to illegal loggers to 'influence' decisions, reduces the potential to change attitudes.

### *Inappropriate Judicial System*

The existing courts systems in Indonesia cannot appropriately address the complexities that arise from illegal marine and coastal resources exploitation. The current judicial system has four types of courts: general courts, religious courts, military courts and state administration courts.<sup>34</sup> All environmental cases proceed to the general court. Consequently, environmental cases are treated in the same way as other general court cases, and are handled by judges and attorneys who only have a very 'general' knowledge of relevant law. This lack of specific knowledge of the environment and marine ecosystems has resulted in difficulties in the prosecution of alleged violators. If the case proceeds to the court, the usual penalty is minimal and provides little deterrence. For example, a contentious issue occurred with regard to the punishment of seven illegal dredging vessels in the District Court of Tanjung Pinang. The district court punished the offenders with a fine of Rp. 30 millions (US\$3,100) for each vessel. The judge's decision was based solely on illegal mining without any consideration of the destruction of the marine environment caused by these illegal activities.<sup>35</sup> It is clear, therefore, that members of the court do not have the capacity, commitment or incentive to address marine environmental problems appropriately.

### *The vast maritime jurisdiction*

The extensive maritime jurisdiction of Indonesia is another cause of ineffective maritime enforcement. With the country's 17,506 islands, their coastlines measuring some 81,000 km, and a sea area covering about 7.73 million sq. km, it is hardly surprising that existing patrol vessels cannot effectively monitor the entire sea area and coastline. This is exacerbated by the fact that law enforcement at sea in coastal and marine areas is much more expensive and difficult than enforcement on land due to the costs of assets and maintenance. The ability of Indonesia's enforcement agencies to enforce maritime laws and regulations using

conventional methods of patrols by aircraft and ships is severely limited. Furthermore, fisheries enforcement in the open sea or remote areas is less visible to other fishermen than on land. This leads to less deterrence than land-based enforcement.<sup>36</sup>

### Recent Developments

Even though law enforcement programs face several problems, significant efforts are being made to address problems of maritime law enforcement at both the national and local levels. These include: the introduction of the concept of community enforcement, the enactment of two decentralisation Acts, and the enactment of the new *Fisheries Act (No. 31 of 2004)*.

### Community Enforcement Program

Global concern over the depletion of some key marine species has increased significantly since the late 1970s. This has resulted in a shift of coastal resources management from local and central government authorities to community institutions. The community-based management (CBM) concept was introduced to many regions in the world in the late 1970s and early 1980s. Many non-government organizations (NGOs) sought to educate fishers and other coastal communities in the management of their marine and coastal resources.<sup>37</sup> Since then, the pendulum has swung to the opposite extreme. This has resulted in increased conflict between fisheries organisations, NGOs and local authorities.<sup>38</sup> However, the involvement of communities in natural resources management has become a trend and an alternative management measure, after several successes in the Philippines and some other regions in the world.

Stakeholder involvement has become an essential element of all integrated coastal and marine resources management. These have been tempered by a 'top down', centralised regime on one hand, and a 'fox minding the chickens' community-run regime on the other, leading to the current co-management (stakeholder and local government) regime at a community/district level. Community enforcement programs are integral to the CBM approach and MCS

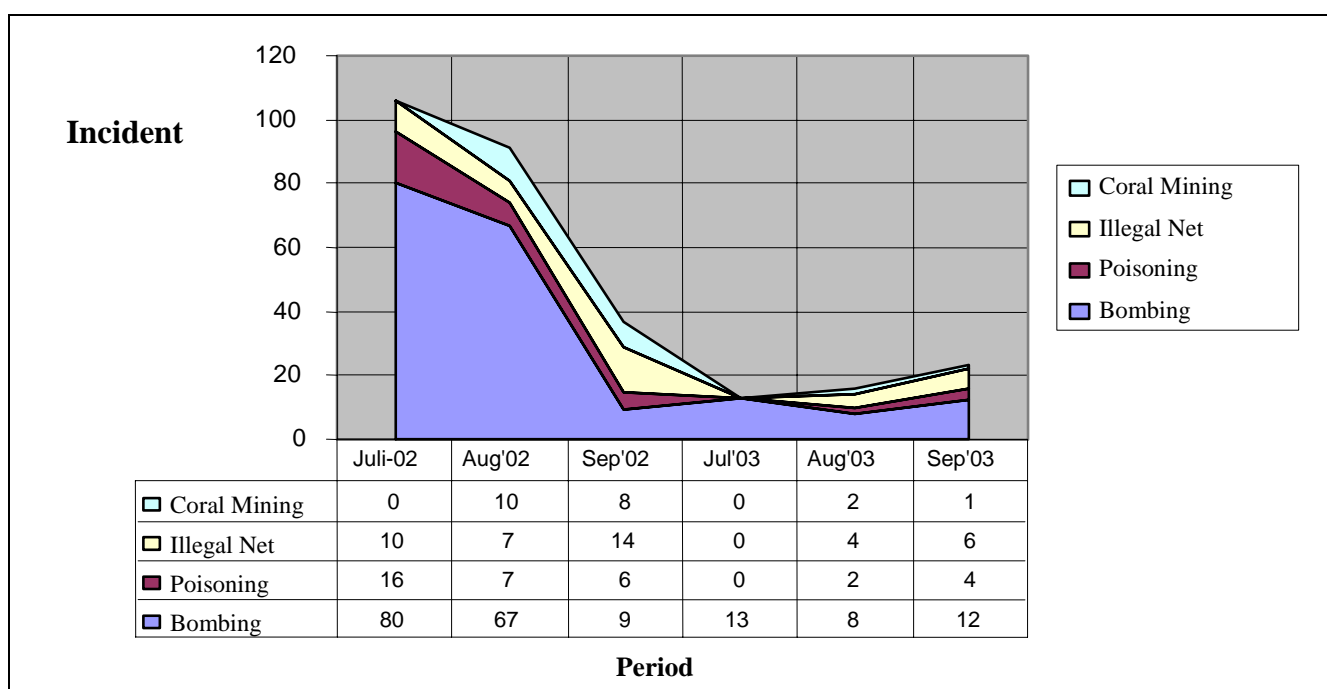
system for coastal areas. This encourages the community to become involved in monitoring, control and surveillance of their surrounding marine resources and to take a role in protecting these resources from illegal activities. Communities are then encouraged to be empowered with local governments to have input into the deterrent/penalty processes through traditional practices now included in law, or with respect to the level of penalties under the law.

The community enforcement program in the marine sector was introduced in Indonesia in the early 1990s. With assistance from some international foundations and NGOs, a reef watcher, beach watcher, or coast watcher program was introduced in some coastal communities in Indonesia.<sup>39</sup> These programs encourage the local community to conduct regular sea patrols in the village marine protected areas or marine conservation zones near its village. For safety reasons, the community acts as a surveillance or 'watcher' only. The reef watchers report and call for assistance from authorised law enforcement officers, authorised security officers, or the village leader, if they find illegal activities in their marine areas.

Although this program is relatively new, the community's sea patrols have achieved significant success in some districts in Indonesia. For example, there has been a significant decrease in illegal fishing activities in the District of Biak Numfor since the implementation of the COREMAP-MCS program in that area. Figure 1 provides a data comparison of the number illegal fishing activities in the period of 2002 and 2003 at eight sites of the COREMAP initiative in the Padaido Islands of Biak Numfor District.<sup>40</sup>

The data shows the important role the community played in the MCS program. They were the 'front line for conservation', the eyes and ears of the program. Based on the community's information, the local security officers were able to catch the alleged fishers 'red-handed', when they committed illegal fishing offences. This success has shown that the involvement of the community in law enforcement activities, particularly in the

Figure 1: Data Comparison of Illegal Fishing in Padaido Islands, 2002-2003



Source: COREMAP MCS report of Kabupaten Biak Numfor, 2002 and 2003.

marine sector, has contributed to the decrease in illegal fishing. Also noteworthy was the pride and confidence generated in the community through this empowerment to protect their resources. Community-based enforcement may be an effective step toward addressing marine resources degradation in Indonesia.

### *Devolution of Authority*

With the enactment of the autonomy laws devolving responsibilities to regional governments, responsibility for the enforcement of national laws is not only the responsibility of central government, but also the responsibility of regional governments in their areas of jurisdiction. The involvement of provincial and district/city governments in law enforcement activities is a new concept in Indonesia. For more than thirty-two years, the responsibility of law enforcement was under the central government. This shift of responsibility is a reasonable one. Besides being in a better position to recognise the problems in their areas the regional governments also have the financial capacity to fund law enforcement programs in their territorial seas, and to take direct action in natural marine resource management.

Nevertheless, the lack of detailed operational guidelines for the autonomy laws created

confusion for the implementation of law enforcement programs at local sites. The involvement of regional governments in enforcement programs became contentious as some strayed into areas of national responsibility, particularly in national defence and security. A good illustration of this occurred when several 'rich' regional governments, such as Riau and East Kalimantan provinces, built a patrol vessel and delivered it to the navy for their operation, presumably for their respective areas.<sup>41</sup> This situation was exacerbated by the fact that the enactment of the autonomy laws resulted in considerable wealth differences between the regional governments. Those with abundant natural resources receive greater income than the poorer regions. For example, Riau, East Kalimantan, Aceh and Papua became richer. It is not difficult for the 'rich' regional governments to fund law enforcement programs, but it is still a problem for the 'poor' regional governments to fund these programs at the same level. This has resulted in the reluctance of some regional governments to plan and implement law enforcement activities.

### *The new Fisheries Act No. 31 of 2004*

The new Fisheries Act, enacted on 15 October 2004, has provisions that will revolutionise

aspects of maritime law enforcement in Indonesia. The transformation of existing legal enforcement institutions and increased maximum penalties for illegal fishing activities are two significant changes.

For the first time since its independence Indonesia will have a specific court to try fisheries offences. Five *ad hoc* fisheries courts have been established.<sup>42</sup> At least four factors distinguish the *ad hoc* fisheries courts from the general courts. First, the prosecutor is required to understand marine, coastal and fisheries ecosystems through formal training. Second, in some circumstances, it is possible to recruit an *ad hoc* judge from academia, government institutions, NGOs, and other formal fisheries associations. Third, the maximum time for law enforcement (from investigation to punishment) has been reduced to about two and half months. Fourth, in some circumstances to speed up the court processes, people can be sentenced *in absentia*.<sup>43</sup> The establishment of the *ad hoc* fisheries courts is expected to address fisheries violations in an effective, efficient and professional manner.

Significantly, the new Fisheries Act has increased sanctions for fisheries violations. For example, the maximum penalty for the use of dynamite, cyanide and other illegal gear was increased significantly from Rp. 100 million (US\$12,000)<sup>44</sup> to Rp. 1.2 billion (US\$133,000).<sup>45</sup> However, the maximum imprisonment for the same violation was decreased from 10 years to six years.

Unfortunately, this amendment has not yet fully addressed law enforcement problems in terms of building the prosecution's case. There is no article that permits the use of technology as evidence of a violation of illegal fishing practices, e.g., the use of a camera (photograph) or a video camera (film) recording the destruction of coastal ecosystems caused by the use of dynamite, cyanide or illegal nets as evidence to prosecute the offender. The principle of *prima facie* evidence still remains. However, the use of scientific experts (expert witnesses) in prosecution has been introduced, but if there is a lack of strong political will and commitment to improve the fisheries management in Indonesia, the amendment of fisheries

law will become a 'paper tiger' and the law will remain ineffective. Lack of commitment and limitations on the use of common law enforcement technology may be potential problems, particularly in remote areas where the facilities normally used to support the law are absent, e.g., crime and forensic laboratories.

Therefore, it is fair to say that only a small part of the overall problem has been solved. It is still a long road ahead for Indonesia to reach a level of effectiveness in maritime law enforcement. A lot of 'home work' on maritime law enforcement waits for coastal managers, police, navy, and other resource stakeholders. An integrated approach is required to solve the complicated problems of natural resource management and maritime law enforcement in Indonesia. The following section provides some possible solutions to address the problems of maritime law enforcement. It proposes policies that should be adopted by Indonesia as steps towards sustainable maritime law enforcement.

### Suggested Solution

The analysis above has demonstrated the complexity of maritime enforcement in Indonesia. An integrated approach is required to address the complicated problems. The discussion below provides some policy options for solving this complex maritime enforcement problem.

The cost of law enforcement is often a primary concern of any government in designing and implementing a law enforcement system. According to Sutinen and Viswanathan, a good enforcement system requires expensive and intensive capital that may exceed at least a quarter to over half of all public expenditures of many developing countries.<sup>46</sup> Cost-effectiveness and efficiency are important factors for successful law enforcement. In many cases, a civilian approach to deterrent fisheries enforcement in coastal areas has proven to be the most cost-effective strategy compared to a military/police approach.<sup>47</sup> It is possible for Indonesia to reduce military involvement in monitoring and surveillance in coastal areas. However, the military can play a significant supporting role for a strong coastal MCS system. The military components (navy and

police) can also play a lead role in the areas beyond the territorial sea, if this is the most desirable solution.

Based on this premise, this paper proposes two solutions that can be considered by Indonesia. These are:

- (i) the establishment of an effective and professional national law enforcement unit; and
- (ii) the establishment of well-trained, professional regional law enforcement units supported by a strong commitment from responsible and sustainable management from appropriate political bodies.

### **The national maritime law enforcement unit**

The Autonomy Law has clearly defined the rights and duties of central and regional governments. Regional governments have rights to manage marine areas up to 12 nautical miles from the shore, the newly defined 'coastal areas,' while central government has authority for the management of marine areas beyond the coastal areas. Therefore, there is no reason for the central government to involve itself in the management of coastal areas, including law enforcement activities, although central government still has authority and responsibilities in matters of security and defence and some other strategic government functions. In simple words, the responsibility of central government in coastal areas must be reduced to that of coordinating activities, security and defence.

There are many central government institutions involved in day to day management of coastal areas, including law enforcement. This has created conflict between central and regional governments, and among central government agencies, and has also resulted in inefficiencies and ineffectiveness in the implementation of an appropriate law enforcement program. The establishment of a **national law enforcement unit** is a possible solution to address the coordination problem at the national level, and for coordination of regional units.

The proposed national law enforcement unit would have two main functions. The first function would be to coordinate inter-agency law enforcement operations in areas beyond

coastal waters. Functions of law enforcement activities in the areas beyond coastal areas can still remain with sectoral agencies. As mentioned above, there are many government law enforcement agencies, including the MOMAF, the MOF, the Navy, Marine Police and the State Ministry of Environment. There is no clear authority and responsibilities for each agency, and no clear mandate for leadership. Law enforcement in these areas is not only for fisheries management and other environmental protection, but also deals with maritime peace, security and defence. Therefore it appears wise to appoint the Indonesian Navy to take the lead role in this offshore sector. Alternatively, the navy could have a lead role in general sense, but it would revert to a support role when an officer of a sectoral agency sailed with a vessel in accordance with an agreed Memorandum of Understanding (MOU), e.g. where the MOMAF is paying for the fuel and meals for a specific patrol. The embarked officer determines the patrol area and targets for investigation within the safety authority of the captain of the vessel.

The second function of a national law enforcement unit would be to assist regional law enforcement units. This includes the co-ordination of national law enforcement agencies that are involved in law enforcement activities at the regional level.

Three options could be adopted in order to establish a national law enforcement unit. The first option is through the revitalisation of the National Coordinating Body for Ocean Safety or BAKORKAMLA. There are some advantages in the designation of this body as the integrated coordination unit for law enforcement activities. These include:

- (i) it would not require significant administrative restructuring;
- (ii) it would reduce the potential for sectoral conflict and avoid duplication between government institutions; and
- (iii) it would be comprehensive – covering all aspects of maritime affairs, such as fisheries, customs, pollution control, and conservation.

However, the political will and commitment of all members of the committee are required to enhance the effectiveness and efficiency of law enforcement operations. This can be achieved through MOUs among the various agencies, providing detailed guidelines for cost allocation and operational procedures. One example where this has been effective is in Canada where there is a quarterly inter-agency planning meeting that provides tentative plans two quarters in advance and confirms the support for each agency for the next quarter.<sup>48</sup> This process is also similar to that of the Malaysian Maritime Enforcement Coordinating Centre, which may also serve as a model for further study.<sup>49</sup>

The second option is through the designation of one national law enforcement agency, such as the MOMAF, or the Customs Department, as the national law enforcement unit, or by giving them the lead role for coordination of national law enforcement activities. The advantage of this option is the potential efficiency and effectiveness. Lines of command and control would be reduced significantly, thus making law enforcement more efficient and responsive to management needs. However, a significant institutional restructuring may be required to implement this option, because many aspects of marine affairs are not under the responsibility of one institution. For example, the responsibility for monitoring and surveillance of national marine parks and illegal trafficking of goods and services are under the Ministry of Forestry, and the Customs and Immigration ministries respectively.

The third option is the creation of a national coastguard. So far Indonesia has no coastguard as such.<sup>50</sup> Coastguards protecting national sovereignty in internal waters are not new. The literature on maritime law enforcement suggests that an independent coastguard service has been used by many maritime nations in the world. Table 2 provides list a range of approaches to coastal protection on the part of a number of disparate nations. Bateman suggests at least three advantages of coastguards.<sup>51</sup> First, there are the legal benefits. A coastguard should be a paramilitary organisation. As a civil organisation, a coastguard unit is more suitable than a warship for conducting law enforcement

in sensitive areas where there are conflicting claims to maritime jurisdictions. The arrest of a foreign vessel by a coastguard vessel may be more acceptable as legitimate law enforcement action than a navy vessel.

Second is the cost effectiveness of a coastguard. Coastguard vessels and aircraft are generally less expensive than naval units.<sup>52</sup> As a civil organisation, it is possible for a coastguard unit of a developing country to attract funding from international aid agencies.<sup>53</sup> Third, the establishment of a coastguard can promote an integrated law enforcement program, because all maritime aspects from the monitoring and surveillance of fisheries, customs, and immigration sectors can be accommodated in one agency.

However, establishing a separate coastguard as the national maritime enforcement agency may generate contentious debate. It would also require extensive amendment of many existing maritime laws, because, as discussed earlier, most of those laws assign the Indonesian Navy the rights and duty for maritime law enforcement power.<sup>54</sup> It would be reasonable to conduct a feasibility study on the establishment of a coastguard unit by Indonesia. This study would provide a detailed analysis of the advantages and disadvantages of a coastguard for maritime law enforcement. It would cover all aspects, including political, legal and socio-economic issues.

### ***Regional law enforcement units***

The Autonomy Law gives regional governments the right to manage coastal and marine resources. This also includes the authority to enforce their jurisdiction. However, to date, regional governments have been more interested in the benefits that accrue to them from their new jurisdiction rather than in the responsibilities. Almost all MCS functions are still carried out by the central government.

As noted earlier, most national income has already been distributed to provincial and district governments. Therefore it is difficult for the central government to continue to fund regional law enforcement activities. It is now time for regional governments to share the cost and responsibility of maritime law enforcement

Table 2: Coastal Protection Arrangement – Selected Countries

Country	Population (million)	Per capita GDP (A\$)	Coastline (km)	Coast Guard
Argentina	37	12,900	4,989	Yes
Australia	19	23,200	36,735	No
Canada	32	24,800	243,791	Yes
Ecuador	13	2,900	2,237	Yes
Egypt	70	3,600	2,450	Within Navy
Greece	11	17,200	13,676	Yes
India	1,030	2,200	7,000	Yes
<b>Indonesia</b>	229	2,900	54,716	Marine Police/Customs
Italy	58	22,100	7,600	Yes
Japan	127	24,900	29,751	Yes
Malaysia	22	10,300	4,675	Marine Police/Customs
Nigeria	127	950	853	Within Navy
Norway	5	27,700	21,925	Within Navy
Peru	28	4,550	2,414	Yes
Russia	146	7,700	37,653	Border Guard
Singapore	4	26,500	193	Police Coast Guard
South Africa	44	8,500	2,798	No
South Korea	48	16,100	2,413	Maritime Police
Spain	40	18,000	4,964	Maritime Police
Sweden	9	22,200	3,218	Yes
United States	278	36,200	19,924	Yes

Source: adapted from The Military Balance (1999) as quoted in O'Connor (2002), p. 94.<sup>55</sup>

programs, through the establishment of maritime law enforcement units at the regional level.

At least three advantages can be achieved through the establishment of regional maritime law enforcement units. First, the efficiency and effectiveness of law enforcement activities would improve significantly, because the areas covered are relatively small. On-site co-ordination of activities should reduce the number of agencies involved. Second, the establishment of regional maritime law enforcement units would provide better opportunities for funding enforcement activities. The involvement of local government in law enforcement will ensure that they allocate budgets for these enforcement

activities. Third, the establishment of regional law enforcement units will serve to accommodate the community better in law enforcement activities in their villages and coastal areas.

Two options can be adopted by local government to establish a regional law enforcement unit. The first is through the designation of one regional law enforcement agency, such as fisheries or forestry offices, as a regional maritime law enforcement unit. The second is the establishment of a regional coastguard that is attached to the national coastguard unit (in this case, the national government would need first to have established a national coastguard unit).

Nevertheless, not all regional governments have the capacity to operate full maritime law enforcement programs, due to lack of funds, infrastructure and personnel. Thus, it may be necessary for the central government to support the operation of regional law enforcement units in these regions to ensure uniform national standards.

### ***Community-based Enforcement Programs***

Community-based enforcement is another option worth considering. There have been some previous attempts to implement community-based enforcement.<sup>56</sup> The COREMAP and *Proyek Pesisir* experiences have shown that a number of requirements must be met to achieve the expected results.<sup>57</sup> First, the program should be incorporated into the initial design of the implementation of community-based resources management framework as a whole. Second, the involvement of the community in all management processes is critical. It is often more effective to let the community decide everything that relates to the management of their natural resources, within the national policy and legal guidelines. The government then acts as a facilitator in a supporting role.

However, both proposed solutions are just part of one strategy to address the coordination problems of law enforcement in Indonesia. There is still much detail to be resolved in order to reform the current law enforcement program. This includes the need to amend existing laws, or enact new integrated laws that accommodate developments in law and technology; and to improve the political will or commitment of central and regional governments to law enforcement.

Again, the establishment of *ad hoc* fisheries courts is not enough to address all the problems of legislation for law enforcement in Indonesia. The existing laws are still fragmented and sectorally oriented. Indonesia needs urgently to enact new integrated laws on natural resources management that accommodate the development of law and technology, and other gaps that currently exist with MCS.

Last but not least is the problem with 'commitment' or 'political will'. Overcoming this is most important for the success of the law

enforcement program in Indonesia. It should exist at all government levels. Even with all the systems in place, a law enforcement program cannot work without support and commitment from all stakeholders, including both the community and government. It is fair to say that the current failure of maritime law enforcement in Indonesia has been the result of a general lack of political will and commitment from central and regional governments. The lack of inputs, such as funds, facilities and personnel can be solved only if all stakeholders are committed. The reluctance of local politicians and bureaucrats to provide appropriate budgets is clearly evident at all government levels. For example, local governments have allocated only small budgets to law enforcement activities in their areas. The lack of funds has, and will, continue to result in difficulties with financing sea patrol operations, training courses, equipment or facilities procurement, awareness activities and paying appropriate salaries for law enforcement staff. This will open the doors further to continued corruption and abuse by law enforcement authorities. The poorest coastal communities will pay the price of resource collapses in their areas, with a resultant potential destabilising of the peace and security of these regional areas. Similar situations may also occur at the central government level.

### **Conclusion**

Maritime law enforcement in Indonesia is confronted by several challenges, including lack of funding; facilities; trained personnel; inter-agency coordinating mechanisms; environmental awareness; the absence of integrated laws; and lack of political will and commitment. Some potential solutions have been proposed that could be considered to address the problems of maritime law enforcement for the management of its coastal and marine resources. These solutions include two broad options:

- (i) establishing a national maritime law enforcement unit or a national coastguard, and
- (ii) establishing regional maritime law enforcement units.



Now, following economic and political recovery in Indonesia, it is time for the country to change the old paradigm about law enforcement, otherwise the beauty and abundance of its natural resources will disappear. The coastal residents, so dependent on the sustainability of these resources, would also lose their main life support system.

## ENDNOTES

- <sup>1</sup> Ministry of Marine Affairs and Fisheries (MOMAF) (2003). MOMAF website: <http://www.dkp.go.id> (accessed on 26 November 2004).
- <sup>2</sup> MOMAF (2002) *Rencana Strategis Pembangunan Kelautan Dan Perikanan Tahun 2001–2004* (Strategic Development Plan of Marine and Fisheries Sectors 2001–2004). Ministerial Decree No. Kep. 18/Men/2002.
- <sup>3</sup> *ibid.*
- <sup>4</sup> There are about sixteen laws and hundreds of regulations that regulate coastal/coral reef management in Indonesia. For a detailed discussion see Dirhamsyah, 'Indonesian Legislative Framework for Coastal and Coral Reef Resources Management: A Critical Review and Recommendations,' *Ocean and Coastal Management* (forthcoming).
- <sup>5</sup> There are four types of marine protected areas in Indonesia: national marine parks, marine recreation parks, marine nature reserves, and marine and wetland life sanctuaries.
- <sup>6</sup> Article 31 of *Act No 31 of 2004* concerning Fisheries and Article 77 of *Act No 41 of 1999* concerning Forestry provide rights to civil investigation officers from both MOMAF and MOF to investigate illegal practices in their sectors.
- <sup>7</sup> This was set up by the Cooperation Decree (*Surat Keputusan Bersama/SKB*) of the Minister of Defence, the Minister of Communication, the Minister of Judicial Affairs, and the General Attorney in 1972. At that time, the Ministry of Marine Affairs and Fisheries had not yet been established by the Indonesian Government.
- <sup>8</sup> Several maritime reconnaissance aircraft of the AURI are used including: 3 units for B737-200 2X9, 2 units for C-130H-MP, 4 units for Hu-16, and N-22-24 Nomad Searchmaster-B. Source: Based on information from: International Institute of Strategic Studies (IISS), *The Military Balance, 1991–1992*, Oxford University Press for the IISS, London, 1991, pp. 164–165; *Majalah Angkasa* (8 May 2003) *Menyingkap Tabir B737 Surveiller* (Discovered Screen of B737 observer). *Majalah Angkasa* websites: <http://www.angkasaonline.com> (accessed on 24 November 2004).
- <sup>9</sup> *ibid.*
- <sup>10</sup> These vessels are docked in seven Indonesian regional waters: Jakarta, North Sulawesi, West Sumatra, Papua, East Nusa Tenggara, West Kalimantan, and Banda Sea.
- <sup>11</sup> B Fegan, *Plundering the Sea. Inside Indonesia*, Jan-March 2003, <http://www.insideindonesia.org>. (accessed on 27 September 2004).
- <sup>12</sup> INKOPAL is the Navy's Cooperative Enterprise.
- <sup>13</sup> The World Bank (2000) as cited by M Torell, & AM Salamanca, 'Navigating the Institutional Landscape: Introduction and Overview', in M Torell & AM

Salamanca, (eds), *Institutional Issues and Perspectives in the Management of Fisheries and Coastal Resources in South East Asia*, SIDA & ICLARM, p. 8, 2001.

- <sup>14</sup> *ibid.*
- <sup>15</sup> *ibid.*
- <sup>16</sup> *ibid.*
- <sup>17</sup> 'Indonesia Butuh Ratusan Kapal Patroli Laut' (Indonesia need hundreds of boat patrols), *Kompas Daily News*, 11 September 2003, <http://www.kompas.com>.
- <sup>18</sup> *ibid.*
- <sup>19</sup> HT Andin as cited by *Kompas Daily News*, 'Indonesia Butuh Ratusan Kapal Patroli Laut' Mr Andin is the Secretary General of the Ministry of Marine Affairs and Fisheries, 2003.
- <sup>20</sup> H Djalal, 'Piracy in South East Asia: Indonesia and Regional Responses', paper prepared for Strategic and International Studies – American – Pacific Sealanes Security Institute Conference on Maritime Security in Asia, January 18–20, 2004, Honolulu, Hawaii, pp. 2–3.
- <sup>21</sup> These include: Takabonerate Islands, Padaido Islands and Raja Ampat Islands, and Wakatobi. Source: COREMAP, 2004.
- <sup>22</sup> JS Pet, & RH Djohani, 'Combating destructive fishing practices in Komodo National Park: Ban the hookah compressor', The Secretariat of the Pacific Community (SPC), *SPC Live Reef Fish Bulletin*, 4, pp. 17–28, 1998.
- <sup>23</sup> This fact is based on the author's experience when involved in COREMAP Phase I in 1998–2002.
- <sup>24</sup> J Patlis, M Knight, & W Siahaan, 'Creating A Framework for Integrated Coastal Management in Indonesia: The Importance of Law', in DG Bengen, IW Arthana, IM Dutton, A Tahir, & Burhanuddin (eds) *Prosiding Konferensi Nasional III 2002: Pengelolaan Sumberdaya Pesisir dan Lautan Indonesia (Proceedings of National Conference III of 2002: Management of Indonesian Coastal and Ocean Resources)*, Bali, Indonesia, pp. v–13, 2002.
- <sup>25</sup> Article 73 of I.
- <sup>26</sup> Article 84 of I.
- <sup>27</sup> Article 500 of I.
- <sup>28</sup> 'Pemerintah Siapkan Keppres Badan Koordinasi Keamanan Laut' (Government prepared Presidential Decree for the National Coordinating Body for Ocean Safety), *Tempo Interaktif Online*, 27 January 2004, <http://www.tempointeraktif.com>. Hon. Yudoyono became the President of Indonesia in 2004.
- <sup>29</sup> 'PEMKAB Kepulauan Seribu Akan Tuntut Perusahaan Minyak' (Regional Government of Kepulauan Seribu will prosecute Oil Company), *Kompas Daily News*, 8 October 2004, <http://www.kompas.com>.
- <sup>30</sup> See A Nontji, 'Coral Reefs of Indonesia: Past, present and future', *Proceedings of International Coral Reef Symposium*, Bali, 23–27, 2000 vol. 1, pp. 17–27, 2000.
- <sup>31</sup> 'Banyak Penegak Hukum Tak Mengerti Lingkungan' (Many law enforcement officers do not understand about Environments). *Gatra Magazine Online*, 9 July 2002, <http://www.gatra.com>.
- <sup>32</sup> E Hafild, as cited by *Kompas Daily News*, 25 February 2000, 'Banyak Kasus LH Kandas di Pengadilan' (Many environmental cases stop in court), <http://www.kompas.com>. Ms Hafild is Executive Director of *Wahana Lingkungan Hidup Indonesia* (WALHI), a well-known NGO in Indonesia.
- <sup>33</sup> The Hon. Nabel Makarim, the former Minister of State Ministry of Living Environment, as cited by *Gatra*

- Magazine Online*, 'Banyak Penegak Hukum Tak Mengerti Lingkungan', 2002.
- <sup>34</sup> Article 10 of *Act No 4 of 2004* concerning Judicial Power.
- <sup>35</sup> 'WALHI dan TNI AL Sesalkan Putusan PN Tanjung Pinang' (WALHI and the Indonesian Navy regret the court decision of District Court of Tanjung Pinang), *Kompas Daily News*, 10 October 2002, <http://www.kompas.com>.
- <sup>36</sup> JG Sutinen, J Yahaya, & V Hinrunruk, 'Fisheries Law Enforcement Programs, Practices, and Problems in Malaysia, the Philippines, and Thailand', in JB Marsh, (ed.), *Resources and Environment in Asia's Marine Sector*, New York, Taylor & Francis Inc., p. 148, 1992.
- <sup>37</sup> P Flewwelling, C Cullinan, D Balton, RP Sautter, & JE Reynold, 'Recent trends in monitoring, control, and surveillance systems for capture fisheries', *FAO Fisheries Technical Paper*, no. 415, Rome, FAO., p. 40, 2002.
- <sup>38</sup> *ibid.*
- <sup>39</sup> As one package with community-based reef management, the community-based enforcement has been implemented in some areas of Indonesia, e.g.:
- Blongko, Bentenan, and Talise of Minahasa District of North Sulawesi Province (initiated by The Indonesia Coastal Resources Management Project);
  - Medang, Temiang, Mamut, Senayang (Penaah), Pasir Panjang, Limbung and Sekanah of Riau Archipelago District of Riau Province (Initiated by Coral Reef Rehabilitation and Management Program/COREMAP);
  - Tarupa, Tinabo, Jinato, Pasitallu Tengah, Pasitallu Timur, Latondu, Rajuni Kecil, and Rajuni Besar of Selayar District of South Sulawesi Province (COREMAP);
  - Mbromsi, Sasari, Samber Pasi, Meos Mangundi, Nusi, Pai, Owi and Auki of Biak Numfor District of Papua Province (COREMAP).
- <sup>40</sup> However, it is fair to say that the success in reducing illegal fishing practice in that area is not only due to the implementation of community enforcement alone, it also involved the intervention and real commitment of several security officers, e.g. the district attorney, the navy and the police.
- <sup>41</sup> 'Heboh Soal Kapal Patroli' (Uproar about Patrol Vessel), *Kompas Daily News*, 6 September 2003, <http://www.kompas.com>.
- <sup>42</sup> *Ad hoc* fisheries courts have been established in Medan (North Sumatra), Jakarta Utara (Jakarta), Pontianak (West Kalimantan), Bitung (North Sulawesi) and Tual (Southeast Maluku).
- <sup>43</sup> Speech by the Minister of Marine Affairs and Fisheries in *Temu Teknis Nasional Aparat Penegak Hukum* (Workshop of National Law Enforcement Officers), MOMAF website: <http://www.dkp.go.id> (accessed on 7 October 2004).
- <sup>44</sup> Article 24 of *Act No. 9 of 1985*.
- <sup>45</sup> Article 84 of *Act No. 31 of 2004*.
- <sup>46</sup> Sutinen and Viswanathan (1999), as cited by Torell and Salamanca, *op. cit.*, p. 7.
- <sup>47</sup> Flewwelling et al., *op. cit.*, p. 4.
- <sup>48</sup> Flewwelling, personal communication in October 2004.
- <sup>49</sup> *ibid.*
- <sup>50</sup> The proposed establishment of a national coastguard has been discussed for some years now, however, this proposal has not yet been approved. Studies and discussions are continuing to seek a proper and effective institutional mechanism to deal with matters of law and order at sea. For detailed discussion see Djalal, *op. cit.*, 2004.
- <sup>51</sup> S Bateman, 'CoastGuards: New Forces for Regional Order and Security', in *Asia Pacific Issues* no. 65, January 2003. East-West Center, Honolulu, pp. 2-3.
- <sup>52</sup> *ibid.*, p. 3.
- <sup>53</sup> *ibid.*
- <sup>54</sup> See Table 1.
- <sup>55</sup> M O'Connor, 'Future Organisational Directions for Maritime Border Protection: The case for an Australian Coastguard', in M Tsamenyi & C Rahman (eds), *Protecting Australia's Maritime Borders: The MV Tampa and Beyond, Wollongong Papers on Maritime Policy*, no. 13, 2002.
- <sup>56</sup> The central government through MOMAF has promoted the concept of community-based enforcement in some areas of Indonesia. Guidelines for community-based monitoring and enforcement of marine and fisheries resources (*Pedoman Sistem Pengawasan Sumberdaya Kelautan dan Perikanan Berbasis Masyarakat / SISWASMAS*) have been issued by the Ministry of Marine Affairs and Fisheries to implement these programs (issued by MOMAF Decree No. KEP.58/MEN/2001). However, due to the lack of preparation and centralised nature of this system, it has not been successful to date.
- <sup>57</sup> For detailed discussion see Dirhamsyah 'The Indonesian Coral Reef Rehabilitation and Management Program: Lessons Learned in Community-based Reef Management at Senayang and Lingga Islands, Riau', *Proceedings of CZAP 2004*, Brisbane 5-9-2004; BR Crawford, IM Dutton, C Rotinsulu, & IZ Hale, 'Community-based Coastal Resources Management in Indonesia: Examples and Initial Lessons from North Sulawesi'. in *ITMEMS Proceedings*, pp. 299-309, 1998.

